

[From the order dismissing the petition of the trustee, Mayo, the latter appealed to the Court of Appeals. In that court the cause was argued before *LeGrand*, C. J., *Eccleston* and *Mason*, J., by *Randall & Hagner*, for the appellant, and by *McLean*, for the appellee. The following is the opinion of that court, delivered by his honor *Chief Justice LeGrand*.]

“We entirely concur with the Chancellor, both in his reasoning and the order which he passed in this case. It was manifestly the intention of the father of the appellee to provide him “an ample and *independent* support during his natural life,” and there is not the slightest evidence furnished by the record to justify the action of the Court of Chancery as asked for by the appellant. There is nothing to sustain the allegation that the appellee has squandered, or is likely to misapply, his income, nor is there any proof to show his mental condition to be different from what it was when his father, by his will, so carefully assured to him “an ample and independent support.” We regard the petition as wholly unsustained. *Order affirmed*.”

JOHN TOLSON,
vs.
HENRY TOLSON ET AL.

} JULY TERM, 1853.

[EXCEPTIONS TO TESTIMONY.]

WHERE testimony taken under a commission has been returned and filed in court for more than eight months, and been made the foundation of the Auditor's report, to which report exceptions were filed, and which was submitted for final decision, it is too late for one of the defendants, who was examined as a witness, to ask that the commission be remanded upon the ground that the commissioner had made mistakes in writing down his testimony. Exceptions to such testimony, upon the ground that the parties had no notice that the defendant was to be examined as a witness, and that they, therefore, had no opportunity of cross-examination, will not be sustained, if they had notice of the time and place of the execution of the commission. The omission to procure the previous order of the court for the examination of a defendant as a witness, is a mere irregularity, and when it is apparent